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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, JULY 14, 2009, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.
(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the May 2009 Regular Meeting (*Attachment A*)

3. EXECUTIVE OFFICER'S REPORT

- a) Open Complaints/Investigations Workload Reports (*Attachment B*)
- b) Co-sponsorship of the 2010 annual conference of National Association of Oversight of Law Enforcement (NACOLE)

4. NEW BUSINESS

- a) 2007 and 2008 annual reports (provided at the meeting)

5. UNFINISHED BUSINESS

- a) N/A

6. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary.

7. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (12)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

08-050 & 08-051

1. Illegal Search & Seizure – Deputy 1 pulled the complainant from the doorway of her house to arrest her for public intoxication.

Recommended Finding: Not Sustained

Rationale: The complainant, her witness, and deputies offered conflicting versions of the complainant stepping from her home versus being pulled from her doorway. There is insufficient evidence to either prove or disprove the allegation.

2. False Arrest – Deputy 1 refused to listen to the complainant's side of the story and arrested her without cause for public intoxication, even though she had consumed less than one beer.

Recommended Finding: Not Sustained

Rationale: Again, the complainant, her witness, and deputies offered conflicting versions of what occurred and the complainant's sobriety. For the safety of the complainant and the officers, the complainant was arrested and taken into custody for 647(f), Drunk in Public. There is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 denied the complainant a sobriety test.

Recommended Finding: Action Justified

Rationale: Persons arrested for 647(f) P.C. do not receive sobriety tests pursuant to arrest. The evidence shows the deputies' conduct was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 drove 80-90 mph and talked on his cell phone while driving the complainant to jail.

Recommended Finding: Sustained

Rationale: Deputy 1 admittedly made a telephone call while transporting the complainant. An Automated Vehicle Locator (AVL) report corroborated that Deputy 1 sped while transporting the complainant. Deputy 1 was in violation of Sheriff's Policy & Procedure 2.35, Operation of Vehicles for speeding. The evidence supports the allegation and the conduct was not justified.

5. Misconduct/Procedure – Deputy 1 reportedly would not apologize to the complainant.

Recommended Finding: Action Justified

Rationale: The Sheriff does not have any policy that mandates personnel to provide apologies. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 2 did not contact the complainant in response to her complaint.

Recommended Finding: Action Justified

Rationale: The complainant first spoke with Deputy 3 and later Deputy 2 who advised the complainant of her complaint options according to Sheriff's policy and procedure. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

7. Misconduct/Procedure – Deputy 4 was unable to provide the complainant with the name and badge number of the arresting deputy.

Recommended Finding: Not Sustained

Rationale: The complainant failed to identify or describe to whom she made this inquiry. Without identification involved person, further investigation is not possible. There was insufficient evidence to either prove or disprove the allegation.

08-059

1. Excessive Force – Deputy 1 forcefully grabbed the complainant's arm.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied "forcefully grabbing" the complainant's arm. Deputy 1 said because the complainant was yelling and waving his arms, he was fearful. Deputy 1 "cupped" the complainant's arm between his thumb and forefingers and pushed it back to prevent touching. Surveillance video and witness testimony did not corroborate or refute either version of the events. There was insufficient evidence to either prove or disprove this allegation.

2. Misconduct/Intimidation – Deputy 1 threatened the complainant, a witness, with arrest and jail if he did not leave an accident scene.

Recommended Finding: Action Justified

Rationale: Involved parties told Deputy 1 that the complainant, a bystander, was aggressive toward them. Deputy 1 said he observed the complainant yelling and believed the complainant was agitating the situation. Deputy 1 told the complainant to leave or he would be arrested for 148(a)(1) PC, Resist, Obstruct, Delay of Peace Officer or EMT. The evidence shows the alleged act or conduct occurred but was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 1 shouted and screamed at the complainant.

Recommended Finding: Action Justified

Rationale: Deputy 1 denied screaming but said he raised his voice to be heard over the complainant, who was yelling. Verbal direction or redirection is permitted by the Sheriff's Addendum, Use of Force Guidelines. The evidence shows Deputy 1's conduct was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 2 would not assist the complainant in identifying a deputy in order to file a complaint.

Recommended Finding: Not Sustained

Rationale: It is unknown who the complainant spoke with when he went to the Lemon Grove station. Supervisors were questioned but did not recall meeting with the complainant on the date of, or days following the incident. The complainant later spoke by telephone with a sergeant, who did a cursory search of the incident location and the name provided by the complainant with negative results. The sergeant advised the complainant to pick up a complaint form from any Sheriff's facility. The sergeant was unable to meet with the complainant because he was called to assist with a fatality. There was insufficient evidence to identify the involved personnel.

08-071

1. Misconduct/Discourtesy – Deputy 1 told the complainant in a loud, threatening voice that she had to be “goddamn stupid” to speak to an inmate in a court room.

Recommended Finding: Not Sustained

Rationale: Video without sound showed a 20-second contact between Deputy 1 and the complainant but showed only Deputy 1's back. Witnesses identified by the complainant did not remember her or an exchange between her and Deputy 1. Another deputy described Deputy 1 as “stern” and “upset” with the complainant and the complainant as “uncooperative,” but gave conflicting accounts of what he heard. Deputy 1, out on long-term leave, was unavailable to question. There is insufficient evidence to prove or disprove the investigation.

2. Misconduct/Intimidation – Deputy 1 threatened to arrest the complainant if she spoke to an inmate in a court room again.

Recommended Finding: Not Sustained

Rationale: State law prohibits communication with prisoners without permission in courtrooms; many courtrooms provide verbal and posted written instruction accordingly. The complainant admittedly mouthed “I love you, I'll pick you up” to her daughter, an inmate seated at the defense table in a courtroom. Video without sound showed that the complainant also waived to her daughter, followed by a 20-second contact between Deputy 1 and the complainant. Witnesses identified by the complainant did not remember her or an exchange between her and Deputy 1. Another deputy stated Deputy 1 told the complainant it was unlawful to communicate with prisoners and that Deputy 1 had warned her several times not to do so, with no effect. Deputy 1, out on long-term leave, was unavailable to question. There is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 1 said in a courtroom, “That's why I carry a fucking gun.”

Recommended Finding: Not Sustained

Rationale: All witnesses denied hearing Deputy 1 make this statement in a courtroom. Deputy 1, out on long-term leave, was unavailable to question. There is insufficient evidence to prove or disprove the allegation.

08-072

1. Improper Discharge of Firearms – Deputy 1 shot at the complainant on the complainant's property.

Recommendation: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation.

2. Excessive Force – Deputy 1 stomped and kicked the complainant as he lay on the ground.

Recommendation: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation.

3. Misconduct/Intimidation – Deputy 1 said, “I could kill you right now and no one would know the difference.”

Recommendation: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation.

4. Illegal Search & Seizure – Deputy 1 detained the complainant in handcuffs for approximately one hour without cause.

Recommendation: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation.

5. Misconduct/Procedure – Deputy 2 refused to allow the complainant’s wife onto their property.

Recommendation: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation.

6. Misconduct/Procedure – An unidentified deputy refused to provide the complainant with a police report related to this incident.

Recommendation: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation.

7. Misconduct/Procedure – Unidentified deputies harassed the complainant over plans to develop his property.

Recommendation: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation.

08-075

1. Misconduct/Procedure – Deputy 1 handcuffed the complainant while detained in solitary confinement, which delayed him from using a urinal.

Recommended Finding: Unfounded

Rationale: A review of deployment records showed that Deputy 1 was not working during the only time the complainant was held alone in a sobering cell. Surveillance video of the sobering cell showed that other deputies uncuffed the complainant before leaving him in the sobering cell, and that the complainant accessed a toilet in the cell with his hands free. The evidence showed the alleged conduct did not occur.

2. Misconduct/Discourtesy – With his hand on his gun, Deputy 1 told the complaint, “They don’t want to talk to your sorry ass” and “You’d better shut the fuck up.”

Recommended Finding: Unfounded

Rationale: Weapons are not allowed in inmate areas of the jail, ruling out Deputy 1. Additionally, jail records showed no overlap in Deputy 1’s work assignments and the complainant’s housing and movements within the jail. The evidence showed the alleged conduct did not occur.

3. Misconduct/Procedure – Deputy 2 detained the complainant for more than 72 hours before releasing him after he was not called for court.

Recommended Finding: Action Justified

Rationale: The complainant was booked into jail on two misdemeanor charges on a weekend night and was eligible for bail. He did not post bail. No charges were filed within 48 hours, and the Sheriff's Department promptly initiated the routine release process. The alleged conduct occurred but was lawful, justified and proper.

08-081

1. Misconduct/Procedure – Deputy 1 contacted the complainant in a parking lot and asked for her driver's license and vehicle registration.

Recommended Finding: Action Justified

Rationale: Deputy 1, checking the license plates of parked cars for current registration and stolen vehicle reports, saw the complainant, a female, sitting behind the wheel of a car registered to a male. The complainant said she produced vehicle registration and a driver's license that did not reflect her current name; the deputy said she did not produce either, gave different last names, and referred to the registered owner as a boyfriend/husband/fiancé. Attempting to determine identity and lawful possession of the male's car, Deputy 1 conducted a brief computer query. He found a warrant under one of the last names the complainant had given and a similar first name. He asked the complainant about a tattoo, concluded the warrant did not belong to her, and released her with a warning to have a current driver's license in her possession. Deputy 1's actions were lawful, justified, and proper.

2. Illegal Search & Seizure – Deputy 1 patted down the complainant and held her handcuffed in the back of a patrol car while he did a warrants check.

Recommended Finding: Not Sustained

Rationale: Both Deputy 1 and the complainant agreed the complainant consented to sitting in the backseat of the patrol car during a brief computer inquiry for identification and warrants. However, Deputy 1 denied patting her down, and Deputy 1 and Deputy 2 denied she was handcuffed. Although it is not disputed that the complainant consented to waiting in the patrol car, there is insufficient evidence to prove or disprove the manner in which she waited.

3. Illegal Search & Seizure – Deputy 2 searched the complainant's vehicle and purse.

Recommended Finding: Action Justified

Rationale: While Deputy 1 conducted a computer query for identification and warrants, Deputy 2 asked for and the complainant admittedly gave consent to a search of her purse and car. The evidence showed that the alleged conduct occurred and was lawful, justified, and proper.

08-082

1. Misconduct/Procedure – Deputy 1 refused to listen to the complainant when following up on a report that the complainant had made a threatening call.

Recommended Finding: Not Sustained

Rationale: Deputy 1 did not recall the phone conversation. There were no witnesses to or recordings of the conversation. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 acted in a biased manner against the complainant and for the person who reported being threatened by the complainant.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied a relationship with the complainant's accuser. This allegation is subjective, and there were no witnesses to or recordings of the phone conversation. There is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Intimidation – Deputy 1 told the complainant to “be quiet” and “not interrupt me or you’re going to jail!”

Recommended Finding: Not Sustained

Rationale: Deputy 1 did not recall the phone conversation. There were no witnesses to or recordings of the conversation. There is insufficient evidence to either prove or disprove the allegation.

09-004

1. Misconduct/Discourtesy – Deputy 1 was rude while serving the complainant with “papers.”

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied treating the complainant rudely while serving him with a temporary restraining order. Rudeness is subjective, and there was no other evidence. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 2 called the complainant on the phone and treated him with disrespect.

Recommended Finding: Not Sustained

Rationale: The Sheriff's Department had no record of an attempt to call the complainant. There is insufficient evidence to identify involved personnel or prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 put the complainant on a “special circumstances list” even though the charges against him had been dropped.

Recommended Finding: Summary Dismissal

Rationale: Although the complaint referred to a “special circumstances list,” the Sheriff's Department does not maintain such a list. According to the complainant and the context of the complaint, the reference appears to be to court documents involving the complainant. Although a deputy served the complainant with court papers, the Review Board does not have jurisdiction over the documents served.

4. Misconduct/Intimidation – Deputy 3 told the complainant the “special circumstances list” meant “if anything bad happens in your neighborhood for the next 90 days, we are coming to you first.”

Recommended Finding: Unfounded

Rationale: The Sheriff's Department does not maintain such a list. According to the complainant and the context of the complaint, the reference appears to be to court documents involving the complainant. Deputy 3 denied making the alleged statement but admitted attempting to explain deputies' responses to a domestic violence call and service of court papers involving the complainant. The evidence showed the alleged conduct did not occur.

5. Misconduct/Procedure – Deputy 3 told the complainant he needed a court order to see the “special circumstances list” and find out how he got on it.

Recommended Finding: Action Justified

Rationale: There is no evidence of such a list. However, Deputy 3 admitted discussing a dispatch record of an alleged domestic violence complaint against the complainant and properly directed the complainant to request a copy by subpoena for Department review and release as permitted by state law.

09-013

1. Misconduct/Procedure – Deputies 1, 2 and/or 3 failed to halt and/or protect the complainant from an assault while in protective custody.

Recommended Finding: Action Justified

Rationale: While housed in protective custody, the complainant was battered by another inmate. Deputy 1 was alerted to the situation by Deputy 3, who was on the module floor assisting with medication distribution. Deputy 3 instructed the module to lock-down, and Deputy 2 responded to the scene to assist. For security reasons, deputies generally do not enter modules until non-participating inmates are locked down. In this incident, it took less than a minute for Deputies 2 and 3 to re-enter the module and secure both the complainant and assailant. Surveillance videotape does not correspond to the complainant's version of events. The evidence shows the deputies' conduct was lawful, justified and proper.

09-045

1. Misconduct/Procedure: Deputy 1 wore his gun during an attempted child visitation out-of-state.

Recommended Finding: Summary Dismissal

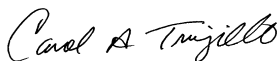
Rationale: The Review Board does not have jurisdiction over off-duty conduct: San Diego County Administrative Code §340 states that the Review Board was established to handle citizen complaints charging deputies and probation officers with "*misconduct arising from the performance of their duties.*" A review of Department records showed Deputy 1 was on vacation when he attempted to visit his children out-of-state. The complainant was referred to officials in her home state regarding her concern about Deputy 1, her ex-husband, carrying a gun.

09-052

1. Misconduct/Truthfulness – An unidentified Animal Services employee lied to a supervisor about the complainant, a student extern, entering a restricted area at an animal shelter a second time, resulting in termination of the externship.

Recommended Finding: Summary Dismissal

Rationale: The Review Board has does not have jurisdiction over Animal Services employees. The complainant was provided contact information for the County's Department of Animal Services and Office of Internal Affairs.



CAROL A. TRUJILLO
Executive Officer

CAT/ab
Attachments